

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

NESTLÉ PURINA PETCARE COMPANY¹

Employer

and

Case 10–RC–265325

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS & GRAIN MILLERS UNION,
LOCAL 42**

Petitioner

DECISION AND DIRECTION OF ELECTION²

Before me in this representation case are the questions whether the petitioned-for unit is an appropriate unit and whether the Region will conduct the election by mail or manual balloting.

The Employer, Nestlé Purina PetCare Company, manufactures pet products. Petitioner, Bakery, Confectionery, Tobacco Workers & Grain Millers Union, Local 42, seeks to represent the following bargaining unit comprised of approximately 54 employees:

Included: All full-time and regular part-time warehouse employees employed by the Employer at its Hartwell, Georgia location.

Excluded: All other employees, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer contends that approximately 145 production employees must be included in the unit in order to constitute the smallest appropriate unit. The Employer also proposes that the Region conduct the election manually while the Petitioner proposes a mail-ballot election due to the global Coronavirus pandemic.

¹ The Employer's name is as amended at the hearing.

² The Petitioner filed this petition under Section 9(c) of the Act. A hearing officer of the National Labor Relations Board conducted a hearing on the issues presented in the petition and all parties were provided an opportunity to present evidence at that hearing. I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I make the following preliminary findings: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is an employer engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain employees of the Employer. The parties were given the opportunity to file post-hearing briefs, and both parties did so.

I find that the petitioned-for unit is appropriate. I shall also direct a mail-ballot election because this is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the Coronavirus pandemic.

Background

The Employer manufactures pet products, including litter, wet pet food, dry pet food, and pet treats. The Employer operates 21 factories in the United States and employs approximately 8,000 employees. The only factory at issue here is the Employer's manufacturing factory located in Hartwell, Georgia. The Hartwell factory opened in 2018 and produces wet pet food, including Fancy Feast brand in three-ounce cans.

The Employer employs about 154 hourly production employees, 52 warehouse employees, all of whom are forklift operators,³ and 15 maintenance technicians in its Hartwell factory. The Petitioner represents the Employer's maintenance technicians and is a party to a collective-bargaining agreement with the Employer covering those employees. Some of the Employer's other factories are unionized and production and warehouse employees are included in the same bargaining units at those locations.

Winston Silva is the plant manager at the Hartwell factory. The Hartwell factory is divided into four departments: production, maintenance, warehouse, and quality.

Among Silva's direct reports is Supply Chain Manager Cy Gilbreth. Warehouse Manager Brian Saunders reports to Gilbreth. Gilbreth testified that he and Saunders work together on warehouse budgeting and policy. Gilbreth also oversees production scheduling, materials purchasing, and the variety pack division.

Four supply chain facilitators report to Saunders. While their shifts differ slightly from the shifts of those of the Hartwell factory forklift operators, one of the four facilitators is always on the Employer's premises while it is operating. In addition, the warehouse chain of command includes five supply chain coordinators. The supply chain coordinators directly supervise the warehouse forklift operators. The supply chain facilitators and supply chain coordinators work only in the warehouse and supervise only warehouse employees.⁴ A separate group of operation facilitators supervises production employees.

All hourly employees are subject to the same employee handbook and employment policies, including policies relating to absenteeism, overtime, vacation time, workplace violence, drug testing, and more. All hourly workers receive the same safety training and utilize the same safety equipment, including protective footwear and eye protection. Additionally, all hourly

³ Warehouse employees may also be called distribution employees.

⁴ It is unclear what supply chain facilitators do. In the warehouse chain of command, the facilitators are above the coordinators, who directly supervise the warehouse forklift operators, and the warehouse manager. Whatever they do, they clearly do that work within the warehouse department.

workers wear the same uniforms. While warehouse employees and production employees currently park in different parking lots, they will soon share a new parking lot which is presently under construction.

Most hourly employees are assigned to one of six shifts. These shifts consist of 12-hour days. There are two day shifts and four night shifts. In one workweek, production and warehouse employees work 36 hours; the next workweek those employees work 48 hours. The factory is open 358 days per year with employees receiving the same seven holidays regardless of job title.

Three variety pack employees work only day shifts Monday through Friday.

The Petitioned-For Unit

Again, the petitioned-for unit consists of warehouse employees, all of whom are classified as forklift operators. As discussed below, production employees get brief forklift training and may operate forklifts from time to time within the production department.

In order to be hired as a forklift operator in the warehouse, an applicant must have a high school diploma or GED and one year of forklift experience. The entry level wage rate for forklift operators is \$20.60 per hour. After 180 days, the wage rate increases to \$21.63 per hour. The highest possible wage rate for forklift operators is \$22.66 per hour. Forklift operators become eligible to receive this wage rate when they achieve 85 percent efficiency in loading, unloading, and case picking for eight consecutive weeks. Forklift operators are eligible for a quarterly performance bonus, known as the “PIP,” which is based partially on whether the warehouse department reaches a quarterly goal and partially on the performance of the factory as a whole.

Any newly hired employee, whether salaried or hourly, must undergo a week-long orientation. Forklift operators in the warehouse receive four weeks of hands-on forklift training in the warehouse partnered with a trainer followed by four weeks of closely-supervised independent work.

Forklift operators in the warehouse begin their shifts by clocking in for work on a timeclock that is near the entrance to the warehouse. The warehouse is located on the northwest side of the Employer’s factory and has its own breakroom and locker room. Each shift begins with a shift handoff meeting attended only by forklift operators and their coordinator (supervisor).

Throughout their shifts, warehouse forklift operators are primarily responsible for unloading trucks arriving from the Employer’s other facilities; case picking, that is, pulling products from the warehouse and assembling pallets with those products; and line haul, which involves driving a forklift to the production floor, picking up products, and bringing them to the warehouse for storage. Forklift operators perform line haul duties on a rotating basis; each forklift operator performs line haul duty approximately once every two weeks.⁵ Forklift operators interact with production employees mainly while performing line haul duties.

⁵ The Employer plans to automate the line haul process but this change has not yet taken effect.

Additional Employees (Production Employees)

A newly hired production employee must have a high school diploma or GED and six months of experience in a manufacturing environment. Like warehouse employees, production employees receive an entry-level wage of \$20.60 per hour. However, production employees can advance to \$21.63 per hour, \$22.66 per hour, \$23.69 per hour, and finally \$24.72 per hour based on the completion of a competency matrix which involves completing job trainings. Like warehouse forklift operators, production employees receive a quarterly bonus which relies on both their department's performance and the plant's overall performance.

Production employees receive a week-long orientation alongside all other new employees. They then receive four weeks of training on the equipment they are assigned to operate, as well as cross-training on other production lines. They receive one day of forklift training which is conducted by warehouse employees.

The production lines are located on the east side of the Employer's premises. Production employees use a timeclock near the factory's Employee Center entrance. The Employee Center has a breakroom and locker room which are used by most production employees.⁶

Production employees receive ingredients and run the factory's production lines. They operate equipment, including fork trucks, packing lines, and processing equipment. That is, production employees create the products that warehouse employees store and distribute. Production employees also perform some low-level maintenance work, such as oiling. As do maintenance employees represented by the Petitioner in a separate unit, production employees carry a lock that is used to turn off machinery while it is being repaired. Warehouse employees do not carry locks.

Three production employees are assigned to the variety pack division. The variety pack area is adjacent to both the production area and the warehouse. Variety pack employees take individual wet food products and feed them into a line of equipment that places those products into unique cases. When cases are completed, variety pack employees transport the cases to the warehouse by forklift. Unlike most production employees, the variety pack employees are "qualified" (rather than merely proficient) forklift operators. Production employees other than the variety pack employees generally do not enter the warehouse.

The variety pack employees' job duties are so unique that if two of the three are absent on any given day, variety pack operations shut down. Supply Chain Manager Gilbreth testified that on such an occasion, the third variety pack employee would be assigned to work in the warehouse. It is unclear whether this has ever happened in practice. Additionally, variety pack employees are eligible to work overtime in the warehouse, although forklift operator Richie Kopf testified that he last observed a variety pack operator working in the warehouse five to six months ago.

⁶ The Employer plans to have production and warehouse employees share cafeteria and locker room space in the future.

Both production employees and warehouse employees are occasionally assigned to assist the variety pack employees by placing products on a conveyer belt so they can be packaged. Gilbreth estimated that in the past four months, warehouse employees have done this work six or seven times and production employees have done this work once. This is the only production work performed by the warehouse employees, who are not trained to run the machines on the production lines.

Variety pack employees have their own facilitator, but when that facilitator is absent, they are sometimes supervised by a warehouse facilitator.

Transfers

Hourly employees may apply for positions in different departments; however, they must fill out an application and undergo an interview when a vacancy is posted. Six or seven forklift operators have successfully applied for and accepted jobs in the production department.

Method of Election and COVID-19 in Hart County

The Petitioner argues that a mail-ballot election is most appropriate under the present circumstances because it is the safest method and will enfranchise even employees who cannot enter the Employer's premises due to positive COVID tests or underlying health conditions.

The Employer argues that a manual election is most appropriate because manual elections frequently result in higher voter turnout and because the United States Postal Service may be unable to deliver mail in an efficient manner. Specifically, the Employer proposes that a manual election should be held in an outdoor trailer or beneath a tent in an adjacent open space. Because the employees work three 12-hour shifts one week and four 12-hour shifts the next week, there is never a day when all employees are present at the factory on the same day. Therefore, the Employer proposes four voting sessions over the course of two days: 6:00 a.m. to 8:00 a.m. and 6:00 p.m. to 8:00 p.m. on a Tuesday and a Friday. The Employer notes that it is willing to comply with all requirements of the General Counsel's Memorandum 20-10 and is willing to make safety adjustments as requested.

The Hartwell factory is located in Hart County in northeastern Georgia, approximately 110 miles from Atlanta, where the NLRB's Regional Office is located. As of September 21, 2020, Hart County reported a greater than 5-percent increase in positive COVID tests and COVID-related emergency department visits for the previous week. Accordingly, the Georgia Department of Public Health classified Hart County as a "county with high transmission indicators."⁷ The positivity rate remains above the 5-percent rate recommended by the World Health Organization for a first phase general re-opening.⁸ More broadly, Georgia Governor Brian P. Kemp has signed multiple Executive Orders declaring and extending a Public Health State of Emergency, most

⁷ See https://countyindicatorreport.s3.amazonaws.com/county_indicator_report+9-21-2020.html#high-transmission-counties-1 (last visited October 7, 2020).

⁸ See <https://coronavirus.jhu.edu/testing/testing-positivity> (last visited October 7, 2020.).

recently on September 30.⁹ Governor Kemp has also ordered Georgia residents and visitors at higher risk for severe illness to continue to shelter in place until at least October 15. Failure to comply with this order is a misdemeanor offense.¹⁰

The Employer has taken steps to mitigate the risk of employees contracting COVID-19 at its factory, and there is no indication that any employee has contracted COVID-19 while at work. However, nine employees have missed work due to the Coronavirus. Forklift operator Richie Kopf testified at the hearing that he is presently infected with the Coronavirus. Kopf confirmed that he is physically able to drive, but that he has not done so because he is under quarantine.

Safety measures implemented by the Employer include making hand sanitizer and sanitary wipes available throughout the factory, increasing cleaning routines for common areas, and mandating masks for visitors and employees. Anyone entering the factory must pass a health and welfare check, including a temperature check. Employees are also assigned to zones in the factory so any potential exposure is limited to the employees in that group.

ANALYSIS

Including Production Employees in Petitioned-For Unit

In *PCC Structurals*, 365 NLRB No. 160 (2017), the Board reinstated the traditional community-of-interest test as articulated in, among others, *United Operations*, 338 NLRB 123, 123 (2002). Under that test, the Board is required in each case to determine:

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

The Board held in *PCC Structurals* that, in weighing both the shared and the distinct interests of petitioned-for and excluded employees, the Board must determine whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. Having made that determination — applying the above factors — the appropriate-unit analysis is at an end. At no point does the burden shift to the employer, as it did under the prior standard in *Specialty Healthcare of Mobile*, 357 NLRB 934 (2011), to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit.

⁹ See <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders> (last visited October 7, 2020).

¹⁰ See <https://georgia.gov/covid-19-coronavirus-georgia/covid-19-state-services-georgia/covid-19-stay-home-if-youre-higher> (last visited October 1, 2020).

In *Boeing Co.*, 368 NLRB No. 67 (2019), the Board elaborated that *PCC Structural*s requires “a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test.” Firstly, the proposed unit must share an internal community of interest. Next, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Finally, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

- Internal Community of Interest

Here, neither party disputes that the petitioned-for unit of warehouse forklift drivers shares an internal community of interest. Indeed, the proposed unit would include only one job title.

- Shared and Distinct Interests

The petitioned-for unit and production employees have many interests in common. They work the same shifts, wear the same uniforms, are subject to the same policies, receive the same orientation, and use the same safety equipment. They work in the same factory, albeit in different parts of the factory. Although they do not share direct supervision, they ultimately fall under the authority of the same managers. Additionally, all production employees and warehouse employees work toward a common goal.

Occasionally, warehouse employees apply to become production employees. This has occurred six or seven times since the Hartwell factory opened two years ago. Additionally, each warehouse employee interacts with production employees once every two weeks while performing line-haul duties. Once or twice a month, a warehouse employee assists the three production employees assigned to assemble variety packs, and the variety pack employees drive forklifts and are permitted to work occasional overtime in the warehouse.

Although a few production employees interact with warehouse employees on a sporadic basis, most production employees never enter the warehouse. Indeed, production employees and warehouse employees currently park in different parking lots, enter the Hartwell factory through different doors, punch different timeclocks, place their belongings in different locker rooms, eat their lunch in different break rooms, meet with different supervisors, and work with different equipment in different areas. Likewise, the hiring criteria for warehouse employees and production employees are not the same. While warehouse employees must have one year of forklift experience, production employees must have six months of experience in a manufacturing environment. Warehouse employees are given intensive forklift training over a period of four weeks, while production employees are given one day of forklift training and four weeks of training on their assigned equipment. Production employees have the potential to earn higher wages than warehouse employees. Although all hourly employees share an introductory wage scale, production employees can earn as much as \$24.72 per hour, while warehouse employees' highest potential wage rate is \$22.66 per hour.

I find that the distinct interests of the warehouse employees and production employees outweigh their common interests. While warehouse employees and production employees share many terms and conditions of employment, the employees are clearly organized into separate departments, have distinct skills and training, and are separately supervised. The job overlap between classifications is minimal; three employees of two hundred perform the uniquely hybrid variety pack work. Likewise, the periodic interaction between warehouse employees and production employees is not sufficient to require the inclusion of production employees in the petitioned-for unit.

- Units Within the Industry

The Employer points to the fact that at several of its other factories, bargaining units include both warehouse and production employees. Such bargaining units are not uncommon; however, neither is it uncommon to have a stand-alone unit of warehouse employees. The Board has made no decisions of the nature contemplated by *PCC Structural*s and *Boeing*, that hold definitively that production employees and warehouse employees must or must not share a unit.

The Employer further notes that the Board frequently includes drivers in bargaining units with manufacturing employees, citing *Standard Oil Co.*, 147 NLRB 1226 (1964), in which the Board found a community of interest between drivers and petroleum plant employees who shared the same overall supervision, had the same benefits, and were paid on the same basis. I note that the Board has also reached the opposite conclusion regarding drivers. For example, in *Overnite Transportation Co.*, 331 NLRB 662 (2000), the Board rejected a contention that the smallest appropriate unit must include both truck drivers and warehouse employees. In *Overnite Transportation*, a union petitioned for a unit of dockworkers and jockeys, which the Board found to be a warehouse-type unit. The Board concluded that city drivers and road drivers need not be included in that unit. In excluding the drivers, the Board observed that the drivers perform a separate function and possess special skills and qualifications. It noted that dock work did not require specialized skills or training, that only a small minority of the dockworkers and jockeys possessed the CDLs necessary to perform driving duties, and that the amount of driving they performed was de minimis. Finally, the drivers worked away from the factory most of the day and did not have any overlapping duties with the dockworkers and jockeys. Although the Regional Director had found that city drivers regularly joined dockworkers to load the city trucks, the drivers' trailers were generally loaded and ready to go when they arrived for work. See also *Nuturn Corp.*, 235 NLRB 1139, 1140 fn. 4 (1978) (truck drivers excluded from warehouse unit); *Cal-Maine Farms*, 249 NLRB 944 (1980) (dockworkers who load and unload trucks not appropriately included in same unit with truck drivers).

In sum, I find no definitive history within the industry that requires that other employees be included in a warehouse unit.

Conclusion on Appropriate Unit

Based on the factors analyzed above, I concluded that the petitioned-for unit of warehouse employees (warehouse forklift operators) is an appropriate unit.

Method of Election

In *San Diego Gas and Electric*, 325 NLRB 1143 (1998), the Board reviewed the circumstances under which it may be appropriate to direct a mail-ballot election. The Board's longstanding policy, as a general rule, is that representation elections should be conducted manually. Recognizing, however, that there are some extraordinary circumstances that would make it difficult for eligible employees to vote in a manual election, the Board vested Regional Directors with broad discretion to determine the method by which elections shall be conducted. Under the guidelines set forth in *San Diego Gas*, a mail-ballot election may be appropriate where eligible voters are "scattered" because of their job duties in terms of geography or varied work schedules, so that all employees cannot be present at a common location at common times to vote manually. When these situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of the parties and the efficient use of Board resources.

In the instant case, eligible voters have work schedules which, while consistent and predictable, are also varied. With rare exception, the Employer's factory operates 24 hours per day, 7 days per week. Because the employees work three 12-hour shifts one week and four 12-hour shifts the next week, all employees are never present at the factory on the same day. The Employer has proposed enfranchising employees who work various shifts by extending polling hours, so that polls would be open between 6:00 a.m. and 8:00 a.m. and 6:00 p.m. and 8:00 p.m. on a Tuesday and between 6:00 a.m. and 8:00 a.m. and 6:00 p.m. and 8:00 p.m. on a Friday.

Under ordinary circumstances, it would be appropriate to extend voting hours to enfranchise employees who work different but regular shifts. Under the present circumstances, however, extended voting hours would require a Board agent to travel over 100 miles from the Regional Office in Atlanta and spend at least two nights in a hotel in an area which is currently categorized as a "county with high transmission indicators" by the Georgia Department of Public Health. Unnecessary travel is discouraged by federal, state, and local authorities as they attempt to stem the spread of COVID-19. Significant travel, including overnight stays, would place the Board agent or Board agents assigned to run the election at an elevated risk of exposure to COVID-19.

In addition, extended polling hours cannot enfranchise those employees who are currently quarantined as a result of illness or who have been ordered to shelter in place due to an underlying health condition. During the hearing, one COVID-positive employee testified that while he is physically capable of driving, he does not do so because he has been directed to quarantine so as to prevent himself from infecting others. The Employer does not allow employees who appear to be ill to enter its premises for this same reason.

Furthermore, the Centers for Disease Control and Prevention has stated that its "current best estimate" is that 50 percent of COVID-19 transmission occurs prior to the onset of symptoms,

and that 40 percent of those infected with COVID-19 are asymptomatic. However, the CDC also recognizes that these estimates remains uncertain.¹¹ In a state like Georgia, which continues to experience high (although declining) levels of COVID-19 cases, the CDC’s data on transmission of this illness without symptoms is troubling.

That being the case, conducting an election manually will expose non-employee participants to the risk of contracting the disease, including the Board agent and non-employee representatives who would be present for any pre-election conference and on-site ballot count. While the Employer’s proposed safeguards for a manual election are commendable, COVID-19 can currently be found both among the Employer’s employees and directly outside the Employer’s factory. Given the possibility of asymptomatic spread, the risk of spreading the disease to employees during the election, and to non-employee participants, is too great at this time.

The Employer has theorized that the United States Postal Service will be unable to deliver ballots to employees with its usual efficiency. There is thus far no evidence of actual delays in Georgia. The Board noted in *Daylight Transport*, 31–RC–262633 (August 19, 2020)¹² that while concerns about potential disenfranchisement of voters could be relevant to whether a mail-ballot election is appropriate, such concerns do not automatically require a manual election. Any party is, of course, free to present evidence of any actual disenfranchisement of voters in post-election objections.

Therefore, I conclude that, under these circumstances, a mail-ballot election is appropriate. A mail-ballot election will enfranchise employees whose schedules may unexpectedly be upended by COVID-19 and employees who do not come into the Employer’s factory for health reasons. In addition, a mail-ballot election will protect the health and safety of voters, Agency personnel, the parties’ representatives, and the public during the current health crisis.

CONCLUSION

The National Labor Relations Board will conduct a secret ballot election among the employees in the following unit:

Included: All full-time and regular part-time warehouse employees employed by the Employer at its Hartwell, GA location.

Excluded: All other employees, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Bakery, Confectionery, Tobacco Workers & Grain Millers Union, Local 42.

¹¹ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last visited October 7, 2020).

¹² Unpublished decision available on the NLRB website here: <https://apps.nlr.gov/link/document.aspx/09031d45831f1f3b>.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **Friday, October 23, 2020**, ballots will be mailed to voters by National Labor Relations Board, Region 10. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 10 office by close of business on Thursday, November 19, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by November 6, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at 404-331-2896 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

A Board agent from the Region will count the ballots at **10:00 a.m. (Eastern Time) on Friday, November 20, 2020**. Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Skype, WebEx, Zoom, etc.) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work

locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by Tuesday, October 13, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on October 20, 2020. If the Employer does not receive copies of the notice by October 15, 2020, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also,

if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail-ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: October 8, 2020



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